

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

SPECIFICATION P-163

STREET MARKING SERVICES

DATE: AUGUST 2018

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DIRECTOR OF POWER SYSTEMS
AND MAINTENANCE

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GENERAL

The Massachusetts Bay Transportation Authority (MBTA) is a member of Dig Safe Inc., ("DIG SAFE"), a cooperative organization which provides prior notice to its members of proposed excavation in the public ways of the Commonwealth of Massachusetts among others. The MBTA is seeking services to locate its utilities, wires, pipes and conduits ("duct lines") under the surface of public ways and MBTA Facilities, including MBTA Yards and MBTA Right-of-Way areas, for the transmission of electricity, telecommunications, mechanical piping, plumbing piping and other products for the public convenience including services providing for the receipt of notification from Dig Safe and marking (Safety Red) the areas of the public ways with which such notifications are concerned by painting distinctive lines on the surface of the parts of such ways above the duct lines of their customers.

1.0 SCOPE OF WORK

- 1.1 With respect to Locate Requests regarding the MBTA's underground facilities that are generated by the Dig Safe System, Inc., the Contractor will perform all required location work as contemplated in this Contract, and shall invoice the MBTA for such work as provided below. The Contractor will also perform such location work as may be requested by the MBTA from time to time subject to the terms and conditions of this Contract.
- 1.2 The Contractor, acting as an independent Contractor and not as an agent of the MBTA, agrees to furnish labor, supervision, tools, equipment, materials, insurance and transportation as required to perform the aforementioned Locates. The Contractor is obligated to monitor and receive such calls from Dig Safe, 24 hours per day, seven (7) days per week.
- 1.3 The Contractor shall comply with all applicable federal, state, county, city and local laws, ordinances, regulations and codes, including, but not limited to the Contractor's obligations as an employer with regard to the health, safety, and payment of its employees, and identification and procurement of permits, certificates, approvals, and inspections required for the Contractor's performance of this Contract.
- 1.4 Should the Contractor enter into location service agreements with one or more additional Facility Owners, and the Contractor performs Locates at excavation sites where the MBTA and one or more Facility Owners have underground facilities, then the multi-party Locate price is already included in the fixed monthly price as set forth in Appendix A. No additional service costs will be charged to the MBTA for this Locate.

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1.5 Mark the surface of any public ways and MBTA Facilities pursuant to any such notice in which a location of MBTA duct line is indicated within **72 hours** after each such notification, except that, if notified by Dig Safe that an emergency situation exists with respect to any area of any such MBTA duct line requiring marking of the location thereof, shall mark such duct line location on such public way surface within **two (2) hours** after such emergency notice.

2.0 **DEFINITIONS** – When used in this Contract, the terms set forth below and in Appendix A will have the following meanings to their respective definitions.

2.1 “Business Day”: Any day other than Saturday, Sunday, or a legal holiday.

2.2 “Contract”: This Specification and Materials Directorate agreement.

2.3 “Contractor’s Normal Business Hours”: The time period between 7:00 a.m. and 4:00 p.m. during business days. (Monday – Friday).

2.4 “Dig Safe Law”: The statutory requirements of Massachusetts Damage Prevention Law, Chapter 82, Section 40 which may be revised from time to time, and any successor statute.

2.5 “Dig Safe System, Inc.”: The service (required to be provided under the Dig Safe Law), through which Excavators notify Facility Owners of proposed excavations and request field marking of underground facilities.

2.6 “Excavation”: An operation for the purpose of movement or removal of earth, rock, or other materials in the ground including, but not limited to, digging, blasting, auguring, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling, and demolition of structures, excluding excavation by tools manipulated only by human power for gardening purposes and use of blasting for quarrying purposes.

2.7 “Excavation Site”: The area where an Excavator intends to excavate or actually performs excavation.

2.8 “Excavator”: Any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, MBTA or state or local government body which performs excavation operations.

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- 2.9 "Facility Owner": A party who (1) is the owner of a specific underground facility, and (2) has contracted with the Contractor to perform Locates for its underground facilities. The MBTA is a facility owner.
- 2.10 "Locatable Underground Facility": An MBTA underground facility which can be field marked with *Reasonable Accuracy* (as defined in Section 2.16).
- 2.11 "Identifiable But Unlocatable Underground Facility": An MBTA underground facility, the presence of which in the vicinity of an excavation site is known, but which cannot be field marked with *Reasonable Accuracy* (as defined in Section 2.16).
- 2.12 "Locate": The process of (a) detecting underground facilities through the use of inductive, conductive equipment or mapping records and (b) marking to identify the existence or non-existence of underground facilities.
- 2.13 "Locate Request" (whether generated by the MBTA or by Dig Safe System, Inc.):
- 2.13.1 "Standard Locate Request": A Request to Locate received by the Contractor at least three (3) business days (72 hrs.) before the commencement of excavation. Example: Contractor receives a request at noon on Friday. The request is a Standard Locate Request if the excavation is scheduled to occur on or after noon on the following Wednesday, unless Monday is a legal holiday, in which case the request is a Standard Locate Request if the excavation is scheduled to occur on or after noon on the following Thursday.
- 2.13.2 "Emergency Locate Request": A Request to Locate (a) designated, either by the MBTA or by Dig Safe System, Inc., as an Emergency Locate Request, or (b) which is received by the Contractor less than three (3) business days (72 hours) before the excavation is to occur.
- 2.13.3 "Remarking Request": A Request to Remark underground facilities previously located and marked by the Contractor in response to a Locate Request generated by the Excavator seeking remarking.

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- 2.14 "Marking": The use of stakes, flags, paint strips of a minimum of two inches by twelve inches or other clearly identifiable materials at distances of at least every ten (10) feet and at each divergence from a straight line. All markings will conform to the provisions set forth in the Dig Safe Law as further specified in Section 2.16 and Appendix B.
- 2.15 "Person": Any individual, partnership, municipality, state, county, political subdivision, utility, joint venture or corporation, including the employer of an individual.
- 2.16 "Reasonable Accuracy": Locating within eighteen (18) inches of the outside dimensions of both sides of an underground facility, as defined in Section 2.19.
- 2.17 "Records": The MBTA's maps, computer databases and other records concerning its underground facilities.
- 2.18 "Service Commencement Date": The date upon which the Contractor shall begin providing services to the MBTA pursuant to this Contract, which date shall be no later than that given in the terms of the agreement Contract.
- 2.19 "Underground Facility": Any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic telephonic or telegraphic communications, electric energy, oil, gas, or other substances including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments appurtenances and those parts of poles below ground. This definition shall not include highway drainage culverts of under drains.

3.0 CONTRACTOR'S PERFORMANCE

Contractor will:

- 3.1 Furnish all labor, tools, implements, machinery and equipment, transportation and supplies necessary for the Contractor's performance under this Contract (including, but not limited to, teletype printer or computer compatible with any communications system used by Dig Safe System, Inc. All Locate equipment shall be state of the art, designed for that purpose, and the Contractor shall perform quality work of highest standards, at least consistent with industry practice.
- 3.2 The Contractor shall promptly notify the MBTA of any and all requests that require response from the MBTA's employees, relative to the MBTA's underground facilities.

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- 3.3 Provide access to the Contractor's computer database for receipt and audit of certain records information; store and safeguard the MBTA's records (in any form) as may be provided by the MBTA to the Contractor from time to time; and not disclose or make available the MBTA's records except to employees of the Contractor, unless otherwise agreed in writing in advance by the MBTA.
- 3.4 Maintain records appropriate to support the invoicing and reporting requirements set forth in Section 4. The Contractor shall maintain a computerized records retention period of six (6) years.
- 3.5 Issue individual photo identity badges to each of its employees identifying the employee as an employee of the Contractor and as a subsurface locator.
- 3.6 Mark the Contractor's name and logo on each side of each vehicle used by the Contractor in Locating.
- 3.7 Equip each of its vehicles with two-way radio equipment, or cellular telephones and pagers.
- 3.8 Ensure that it is capable of:
 - (a) receiving Locate Requests from Dig Safe System, Inc., and;
 - (b) providing locating service for Emergency Locates on a 24-hour, seven-days-a-week basis.
- 3.9 Provide the MBTA with a duty roster showing the names, emails, and phone numbers of the employees to contact for Locates required outside of the Contractor's normal business hours.
- 3.10 Upon receipt of a Locate Request, the Contractor will:
 - 3.10.1 Review the Locate Request and determine, based on the location of the proposed excavation and such records as the MBTA has provided, whether there is any reasonable possibility that the MBTA may have underground facilities in the vicinity of the excavation site.

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- 3.10.2 If it determines, based on the MBTA's results, that there is a reasonable possibility that the MBTA may have underground facilities at the excavation site, it will visit the excavation site, conduct a visual examination, and locate such underground facilities as the MBTA may have at the site.
- 3.11 For each Standard Locate Request, the Contractor will complete the requirements of Section 3.10 within three (3) business days (72 hours) of receiving the request. Example: The Contractor receives a Standard Locate Request at noon on a Friday. The Contractor shall have until noon on the following Wednesday to respond to the Request, unless Monday is a legal holiday, in which case the Contractor shall have until noon on the following Thursday to respond.
- 3.11.1 For each Emergency Locate Request, the Contractor will complete the requirements of Section 3.10 within two (2) hours.
- 3.11.2 For each Remarking Request, the Contractor will complete the requirements of Section 3.10 within one (1) business day (24 hours) of receiving the Request. Example: The Contractor receives a Remarking Request at noon on Friday. The Contractor shall have until noon on the following Monday to remark the underground facilities, unless Monday is a legal holiday, in which case the Contractor shall have until noon on the following Tuesday to respond.
- 3.12 Whenever the Contractor receives any information, including a Locate Request, that indicates that the Excavator will be engaging in blasting, the Contractor will promptly notify the MBTA thereof.
- 3.13 If in the course of a visit to an excavation site the Contractor finds that the Excavator has not pre-marked the excavation site, then:
- (a) If the Contractor can determine the boundaries of the proposed excavation site, in its sole direction, with reasonable certainty, it will mark the site for the sole purpose of indicating the location of the MBTA's underground facilities.
 - (b) If the Contractor cannot determine the boundaries of the proposed excavation site with reasonable certainty, then it will contact the Excavator, request that the Excavator pre-mark the site and thereafter revisit the site to locate the MBTA's underground facilities at no extra charge to the MBTA.

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- 3.14 At the request of the MBTA, the Contractor will provide such additional services as site surveillance, maintenance of marks, stakes, and standby protection at no extra charge to the MBTA.
- 3.15 Should an excavation at an excavation site that has been the subject of a Locate Request handled by the Contractor cause damage to the MBTA's underground facilities, the provisions of Appendix C shall apply.
- 3.16 If in responding to a Locate Request, the Contractor determines that the MBTA's underground facilities are identifiable, but unable to be located, then the Contractor shall contact and inform the Excavator and the MBTA thereof. The Contractor shall have no obligation to mark such underground facilities, and shall have no liability for failing to mark the same. However, the contractor shall be responsible to mark MBTA duct banks that contain empty conduits. The contractor is responsible to submit to the MBTA the procedure for marking empty duct banks.
- 3.17 The Contractor shall maintain a controlled substance testing program for pre-employment purposes of its employees.
- 3.18 In situations where clearances are restricted, work shall be performed during non-revenue service hours, 1:30 a.m. to 4:45 a.m. Clearances for Authority track vehicles shall be strictly maintained between work periods. The Authority reserves the right to restrict access to its system at any time due to emergencies, inclement weather, or other work related conflicts. The contractor shall coordinate their work with that of other contractors including Authority workforces. The contractor will be responsible to work under the requirements of the latest version of the MBTA Right-of-Way Access (ROW) Policy when accessing MBTA Right-of-Way areas.
- 3.19 All contractors entering the MBTA ROW will be required to attend the MBTA ROW Safety Rulebook Training Class and/or recertification within the past two years.

4.0 INVOICING AND REPORTING

- 4.1 The Contractor shall submit a monthly invoice including the following:
- 4.1.1 If applicable, the name of the MBTA maintenance center for which each Locate Request was performed.
 - 4.1.2 The period during which the services were performed.
 - 4.1.3 The total number of Locates performed for the MBTA.

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4.1.4 The total number and nature of any additional services (such as Call-Outs) performed for the MBTA.

4.1.5 The total charge for work done during the period covered by the invoice.

4.2 Contractor shall submit a written report each month which will include an itemized tabulation showing the following for each Locate Request the Contractor received:

4.2.1 Ticket number. (In case of multiple locates, the number of each ticket per Locate.)

4.2.2 Date and time of any work.

4.2.3 Locations of proposed Excavation.

4.2.4 Work performed (i.e., indicate whether a single or multiple party Locate was performed, whether the Locate was an Emergency Locate, etc.)

5.0 THE MBTA'S REQUIREMENTS

5.1 The MBTA will provide such records of its underground facilities and other information as it has available to the Contractor for performance under this Contract. The MBTA does not guarantee the accuracy of its records. Records provided by the MBTA are intended to serve as a guide only, and not as the sole means to locate the MBTA's underground facilities.

5.2 The MBTA will make reasonable efforts to keep all records current.

5.3 The MBTA will cooperate with the Contractor in the performance of their duties; however the MBTA will furnish such personnel as there are reasonably necessary to assist in locating the MBTA's underground facilities, where the Contractor determines the MBTA's records are inaccurate.

6.0 CONTRACT PRICE

6.1 The MBTA and the Contractor agree that the compensation to be paid the Contractor under this Contract for work performed for the MBTA by the Contractor shall be computed as a fixed monthly charge for a thirty six (36) month period, as set forth in the Schedule of Price, Appendix A. Additional work performed for the MBTA in accordance with Section 3.14 will be at no extra charge to the MBTA.

7.0 TERM OF CONTRACT

7.1 This Contract shall remain in effect for a period of three (3) years from the Service Commencement Date. Notwithstanding the foregoing, the MBTA shall be entitled to cancel this

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Contract upon seven (7) days written notice at any time during this Contract.

- 7.2 In the event of a material breach of any of the terms of this Contract, the non-breaching party shall notify the breaching party in writing specifying the breach. The breaching party shall have ninety (90) days from the date of written notice (the "Cure Period") to cure the breach, except for payment defaults by the MBTA, as to which the Cure Period shall be fifteen (15) days.

If the breach has not been cured within the Cure Period, then at its option the non-breaching party may terminate this Contract by sending written notice thereof to the breaching party.

8.0 MBTA'S RIGHT TO AUDIT

- 8.1 For a period of three (3) years after the completion of the work covered by this Contract, the MBTA, its auditor, or other authorized representative, shall be afforded access at reasonable times to any accounting records relative to the work encompassed by this Contract.
- 8.2 During the term of this Contract, the Contractor will maintain a computerized on-line audit capability which will permit the MBTA to gain access to, and determine the status of, Locate Requests regarding the MBTA's underground facilities that are currently being handled by the Contractor.

9.0 SEVERABILITY; CHOICE OF LAWS

- 9.1 If any term or provision of this Contract or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract or the application of such terms or provisions to persons, property and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of this Contract shall be valid and in force to the fullest extent permitted by law. This Contract shall be governed by and construed under the law of the Commonwealth of Massachusetts.

10.0 PAYMENT

- 10.1 Contractor agrees to furnish monthly invoices in accordance with Section 4. The MBTA shall make all attempts to render to the Contractor not later than 60 days from receipt of Contractor's invoices the total amount due to the Contractor.

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10.2 Payment Schedule: Payment for services rendered shall be as defined in Appendix A – Schedule of Price.

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APPENDIX A

SCHEDULE OF PRICE

The Contractor shall charge the MBTA a monthly fixed price for the term of the Contract (as opposed to an hourly rate for work performed).

The following are services listed and defined that are included, but not limited to, in this Contract:

- Standard Locate
- Multi-party Locate
- Emergency Locate and Response
- Per Extra 500 Feet
- Check
- Multiple Calls

Standard Locate: the Contractor receives a Standard Locate Request and visits the excavation site, subject to Section 1.4.

Multi-Party Locate: the Contractor locates underground facilities at the excavation site which belong to one or more facility owners (in addition to the MBTA). Example: The Contractor receives a Standard Locate Request and visits the site to locate underground facilities belonging to the MBTA, Facility Owner A and Facility Owner B (a three party service). The MBTA shall not be charged extra for the Multi-Party Locate.

If the Contractor is required to make a second visit to the site (see Section 3.13), the MBTA will not be charged extra. If the Contractor is unable to make the second site visit during the Contractor's normal business hours, then the second site visit shall be treated as a Call-Out. The MBTA shall not be charged extra for the Call-Out.

Locates performed as a result of a Remarking Request as described in Section 2.13.3 herein shall be considered a Standard Locate.

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APPENDIX A (Cont.)

Emergency Locate and Response: the Contractor receives an Emergency Locate Request and visits the excavation site, subject to Section 1.5 and Section 2.13.2. The MBTA shall not be charged extra for the Emergency Locate or an Emergency Request to Respond to a Contractor dig-in to MBTA utilities.

Per Extra 500 Feet: If the MBTA's underground facility to be located and marked at an excavation site extends for a distance greater than 500 feet, then each additional 500 foot section, or portion thereof, shall not be charged extra to the MBTA.

Check: the Contractor receives a Standard or Emergency Locate Request and determines that there is no reasonable possibility that the MBTA may have underground facilities at the site and therefore does not make a site visit, subject to Section 3.10.1. The MBTA shall not be charged extra for the Check.

Multiple Calls: If the Contractor receives multiple calls for the same location within three (3) business days, then the MBTA shall treat the multiple calls as one Call-Out. The MBTA shall not pay for freeform or multiple calls.

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APPENDIX B

ADDITIONAL MARKING SPECIFICATIONS

In accordance with the specifications set forth in Section 2.13, the following shall apply:

Markings shall be corridor markings unless otherwise directed and must be within 18 inches each side of the actual underground facility location. Any marking which varies in excess of 18 inches will be considered to be an incorrect marking. Location of markings (paint, flags, and/or stakes) will be placed no more than ten (10) feet apart and at each divergence from a straight line. Each marking will be a minimum of two inches wide and 12 inches long when using paint. Flags or stakes shall be used to mark landscaped areas, e.g., lawns, gardens, flower beds, decorative rock areas or any other place where paint may cause harm or permanently damage the existing surface. Long stakes will be used if marking is required in heavy brush or high weed areas and in deep snow conditions.

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APPENDIX C

Procedure in the Event of Damage to MBTA Facilities

Should an excavation at an excavation site located by the Contractor result in damage to the MBTA's underground facilities (a "Dig-In"), the MBTA shall promptly notify the Contractor of the Dig-In, indicating:

1. The time the Dig-In occurred;
2. the time the Dig-In was reported;
3. the location of the Dig-In;
4. if applicable, the ticket number of the Locate;
5. any known circumstances surrounding the Dig-In;
6. the identity of the Excavator or, if other than the Excavator, the identity of the party causing the damage;
7. the identity of the party reporting the damage; and
8. the MBTA's estimated time of arrival at the excavation site to begin its investigation of the Dig-In.

If the Contractor becomes aware of a Dig-In from sources other than the MBTA, it will immediately notify the MBTA thereof.

The Contractor will cooperate fully with the MBTA in investigating Dig-Ins at excavation sites located by the Contractor

The Contractor may be required to respond to a Dig-In, verify its markings, and report findings to the MBTA.

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